SUPREME COURT OF THE UNITED STATES.

No. 228.

JESSE B. RAGAN, PLAINTIFF IN ERROR,

vs.

LUKE AND CHARLES TIERNAN.

IN ERROR TO THE CIRCUIT COURT, U. S., FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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GIDEON, Print.

L. & C. TIERNAN }
vs.
JESSE B. RAGAN et al. }

Pleas before the honorable Peter V. Daniel and Samuel J. Gholson, judges of the circuit court of the United States, held at the town of Jackson, in and for the ninth circuit and southern district of Mississippi, at the May term, in the year of our Lord one thousand eight hundred and fifty-one.

Be it remembered, that heretofore, to wit, on the 8th day of May, in the year of our Lord one thousand eight hundred and fifty-one, came Jesse B. Ragan, by his attorneys, Yerger and Anderson, into the circuit court aforesaid, and filed the following motion herein, in the words and figures, to wit:

The said Jesse B. Ragan moves the court to quash the execution issued the 27th January, on a judgment obtained in this court, against him and others, for $7,308 83. Judgment obtained 24th May, 1839. Also to quash the levy of the execution on the slaves mentioned in the marshal's return, and for a perpetual stay of execution. Because, 1st, said Jesse B. Ragan states that said judgment debt was not a trust or fiduciary debt, and he states he became a bankrupt by virtue of the late act of Congress, and he was in 1843 legally discharged as a bankrupt from all his debts, and because said judgment had no lien attached to it at the time it issued, nor has it now.

2d. Because said property so levied on was previously levied on by the sheriff of Warren county, upon an execution against said Ragan, which levy is yet undisposed of, the sale under it being enjoined and bond given to deliver the negroes to the sheriff, if the injunction is dissolved.

3d. Because said execution issued more than a year and a day after the rendition of the judgment.

4th. Because said judgment is null and void.

And afterwards, to wit, at the said May term of the court first aforesaid, to wit, on the twelfth day of May, in the year of our Lord one thousand eight hundred and fifty-one, came as well the said Jesse B. Ragan, by his said attorneys, as the said plaintiffs, by their attorneys, Adams and Dixon, and the said motion being fully argued and heard, and now understood by the court, it is ordered by the court that the said motion be overruled.

Bill of exceptions tendered by Jesse B. Ragan.

Be it remembered, that on this twelfth day of May, A. D. 1851, in the circuit court of the United States, for the southern district of Mississippi, came on to be tried the above motion; whereupon the said

Jesse B. Ragan, by his counsel, read to the court the execution and levy which it was the object of the motion to quash, and the record in the case, which are in the words and figures following, to wit:

L. & C. TIERNAN
vs.
B. R. BOOKOUT et al.

Pleas before the honorable Samuel J. Gholson, district judge of the United States, at a circuit court of the United States, in and for the ninth circuit and southern district of Mississippi, held at the town of Jackson, at the May term, in the year of our Lord one thousand eight hundred and thirty-nine.

Be it remembered, that heretofore, to wit, on the 15th day of March, A. D. 1839, the following writ of summons ad respondendum, issued out of the clerk's office of the court aforesaid, in these words and figures, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss.

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you, without delay, to summon Benjamin R. Bookout, Jesse B. Ragan, Harvey Houghton, and Samuel Anderson, citizens of the State of Mississippi, that they be and appear before the circuit court of the United States, to be held at the town of Jackson, in and for the district of Mississippi, on the first Monday of May next, to answer to Luke Tiernan and Charles Tiernan, who are citizens of the State of Louisiana, and partners in trade under the style of Luke and Charles Tiernan, of a plea of trespass on the case to their damage fourteen thousand dollars, and that they do file their plea or defence with the clerk of said court, on or before the meeting of the same, or judgment will be given against them by default, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the 15th day of March, A. D. 1839, [L. s.] and of the independence of the United States the sixty-third.

WM. BURNS, *Clerk.*

(Marshal's return.) Executed on B. R. Bookout and Samuel Anderson, 20th March, 1839; on Jesse B. Ragan, 8th April, 1839.

WM. M. GWIN, *Marshal,*
By E. H. GREER, *his deputy.*

Not found as to Houghton.

W. M. GWIN, *Marshal.*

And on the said 15th day of March, A. D. 1839, the said plaintiffs by W. H. & A. M. Paxtons, their attorneys, filed their declaration herein against the said defendants, in the following words and figures, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi.

Circuit court, May term, A. D. 1839.

Luke Tiernan and Charles Tiernan, who are citizens of the State of Louisiana, and partners in trade under the style of Luke and Charles Tiernan, by their attorneys complain of Benjamin R. Bookout, Harvey Houghton, Jesse B. Ragan, and Samuel Anderson, citizens of the State of Mississippi, resident in the southern district thereof aforesaid, who were summoned to answer them, the said plaintiffs, of a plea of trespass on the case.

For that whereas the said defendants, by the names of B. R. Bookout, H. Houghton, security, J. B. Ragan, security, and S. Anderson, heretofore, to wit, on the twenty-seventh day of June, in the year of our Lord one thousand eight hundred and thirty-eight, at Vicksburg, to wit, in the southern district of Mississippi aforesaid, made their certain joint and several promissory note in writing, bearing date the day and year last aforesaid, and thereby then and there, jointly and severally, promised to pay on the first day of October, one thousand eight hundred and thirty-eight, to the order of said plaintiffs, by the names of Luke and Charles Tiernan, the sum of six thousand nine hundred and sixty dollars and eighty cents, for value received, negotiable and payable at the Commercial and Railroad Bank of Vicksburg, and then and there delivered the said promissory note to the said plaintiffs, by means whereof the said defendants then and there became liable to pay the said plaintiffs the said sum of money in the said promissory note specified, according to the tenor and effect of the said promissory note; and being so liable, they, the said defendants, in consideration thereof, afterwards, to wit, on the twenty-seventh day of June, in the year of our Lord one thousand eight hundred and thirty-eight, at Vicksburg, to wit, in the southern district of Mississippi aforesaid, undertook, and then and there faithfully promised the said plaintiffs to pay them the said sum of money in the said promissory note specified according to the tenor and effect thereof; and whereas also, the said defendants afterwards, to wit, on the first day of October, in the year of our Lord one thousand eight hundred and thirty-eight, to wit, in the district aforesaid, were indebted to the said plaintiffs in the further sum of ten thousand dollars for the work and labor, care and diligence, of the plaintiffs before that time, done, performed, and bestowed in and about the business of the said defendants, and at their special instance and request; and also in the further sum of ten thousand dollars for divers goods, wares, and merchandise by the said plaintiff before that time sold and delivered to the said defendants, and at their special instance

and request; and also in the further sum of ten thousand dollars for money by the said plaintiffs before that time lent and advanced to, and paid, laid out, and expended for, the said defendants, and at their like special instance and request; and also in the further sum of ten thousand dollars for other money by the said defendants before that time had and received to and for the use of the said plaintiffs. And being so indebted they, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, to wit, in the district aforesaid, undertook, and then and there faithfully promised the said plaintiffs, to pay them the said several sums of money in this count mentioned when they should be thereunto afterwards requested.

Nevertheless the said defendants, not regarding their said several promises and undertakings, but contriving and fraudulently intending to deceive and defraud the said plaintiff in this behalf, have not as yet paid the said several sums of money, or any or either of them, or any part thereof to the said plaintiffs (although often requested so to do.) But the said defendants to pay them the said several sums of money, or either of them, or any part thereof, have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of the said plaintiffs of fourteen thousand dollars, and therefore they bring this their suit, &c.

W. H. & A. M. PAXTON,
Plaintiffs' attorney.

And the said defendants by their attorney come and defend the wrong and injury, when, &c., and say that they did not undertake or promise in manner and form as is above thereof alleged against them, and of this they put themselves upon the country, &c.

GUION, SMEDES & MARSHALL.

And the plaintiffs do the like.

PAXTONS, *P. Q.*

Afterwards, to wit, at the said May term of the court aforesaid, to wit, on the twenty-fourth day of May, in the year of our Lord one thousand eight hundred and thirty-nine, came the parties aforesaid, by their respective attorneys, and a jury being called came, to wit, David N. Barrows, Thomas Johnson, J. H. W. Dearing, J. B. Raine, E. M. Avery, D. C. Hardie, J. F. Irish, Samuel Moody, Samuel Swanson, John Carter, Thomas Noble, and James Lynch, who being empannelled, tried, and sworn to speak the truth concerning the matters within contained, do say upon their oaths, that the said defendants did undertake and promise in manner and form as is above alleged against them, and they assess the damages, by reason of the premises, at seven thousand three hundred and eight dollars and eighty-three cents.

Therefore, it is considered by the court, that the said Luke and Charles Tiernan, plaintiffs, recover against the said Benjamin R. Bookout, Harvey Houghton, Jesse B. Ragan, and Samuel Anderson, defendants, the said sum of seven thousand three hundred and eight dol-

lars and eighty-three cents, for their damages aforesaid, by the jurors, in form aforesaid assessed, and also their cost and charges by them about their suit in this behalf expended.

And the said defendants in mercy, &c.; and afterwards, to wit, on the 24th day June, A. D. 1839, the following execution of fieri facias issued in the words and figures, to wit:

CIRCUIT COURT OF UNITED STATES,
Southern district of Mississippi, sct.

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you that of the goods and chattels, lands and tenements, of Benjamin R. Bookout, Harvey Houghton, Jesse B. Ragan, and Samuel Anderson, late of your district, you cause to be made the sum of seven thousand three hundred and eight $\frac{83}{100}$ dollars, which Luke Tiernan and Charles Tiernan, partners under the firm of Luke and Charles Tiernan, lately in our circuit court for the district aforesaid, have recovered against them for their damages, which they have sustained by reason of the non-performance of a certain promise and assumption by the said defendants to the said Luke and Charles Tiernan lately made, with interest on the said sum at 8 per centum per annum, from the 24th day of May, 1839, until paid; also the sum of 40.91⅔ dollars, for costs by them about their suit in that behalf expended, whereof the said Bookout, Houghton, Ragan, and Anderson are convicted, as appears to us of record; and that you have the said moneys before the judges of our said court, on the first Monday of November next, to render unto the said plaintiffs, for their damages and costs aforesaid; and have then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of May, A. D. one thousand eight hundred and thirty-nine, and [L. S.] in the 63d year of the independence of the United States of America. Issued the 24th day of June, A. D. 1839.

WM. BURNS, *Clk.*

Marshal's return.

"No property to be found out of which this fi. fa. can be made.

"WM. M. GWIN, *Marshal*,
"By E. H. GREER, *Deputy*."

And afterwards, to wit, on the 4th day of June, A. D. 1850, the following alias execution of fieri facias issued in the words and figures, to wit:

CIRCUIT COURT OF THE UNITED STATES,
Southern district of Mississippi, sct.

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you as before, &c., that of the goods and chattels,

lands and tenements, of Benjamin R. Bookout, Harvey Houghton, Jesse B. Ragan, and Samuel Anderson, late of your district, you cause to be made the sum of seven thousand three hundred and eight dollars $\frac{88}{100}$, which Luke Tiernan and Charles Tiernan, under the firm of Luke and Charles Tiernan, lately in our circuit court for the district aforesaid, have recovered against them for their damages, which they sustained by reason of the non-performance of a certain promise and assumption by the said defendants to the said plaintiffs lately made, with interest on the said sum at 8 per centum per annum, from the 24th day of May, 1839, until paid; also the sum of fifty-three $\frac{50}{100}$ dollars for costs by them about their suit in that behalf expended, whereof the said defendants are convicted, as appears to us of record; and that you have the said moneys before the judges of our said court, on the first Monday of November next, to render to the said plaintiffs for their damages and costs aforesaid; and have then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Mon-
[L. S.] day of May, A. D. 1850, and in the 74th year of the independence of the United States of America.

Issued the 4th day of June, 1850.

W. H. BROWN, *Clerk*,
Per CHAS. H. ROGERS, *D. C.*

Marshal's return.

The within named defendants hath no goods or chattels, lands or tenements, within my district, whereof I can make the sums within mentioned, or any part thereof.

FIELDING DAVIS,
Nov. 4, 1850. *Marshal southern district, Miss.*

And afterwards, to wit, on the 27th day of January, A. D. 1851, the following pluries execution of fieri facias issued, in the words and figures, to wit:

CIRCUIT COURT OF THE UNITED STATES,
Southern district of Mississippi, sct.

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you, that of the goods and chattels, lands and tenements, of Benjamin R. Bookout, Harvey Houghton, Jesse B. Ragan, and Samuel Anderson, late of your district, you cause to be made the sum of seven thousand three hundred and eight $\frac{88}{100}$ dollars, which Luke Tiernan and Charles Tiernan lately, in our circuit court, for the district aforesaid, have recovered against them for their damages, which they have sustained by reason of the non-performance of a certain promise and assumption by the said defendants to the said plain-

tiffs lately made, with interest on the said sum, at 8 per centum per annum, from the 24th day of May, 1839, until paid; also the sum of sixty-two dollars 83⅓ [cents] for costs by them about their suit in that behalf expended, whereof the said defendants are convicted, as appears to us of record; and that you have the said moneys before the judges of our said court, on the first Monday of May next, to render unto the said plaintiffs for their damages and costs aforesaid; and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Mon-
[L. S.] day of November, A. D. 1850, and in the 75th year of the independence of the United States of America.

Issued the 27th day of January, 1851.

W. H. BROWN, *Clerk*,
Per CHAS. H. ROGERS, *D. C.*

Marshal's return.

Levied, the 23d April, 1851, on all the right, title, and interest of the defendant, Regan, to the following negro slaves, to wit: Caroline, valued at $400; Patsey, valued at $400; Fatima, valued at $300; Julia, $500; Nancy, $400; Rose, $400; Jerry, $600; Charles, $200; William, $500; Preston, $500; Little Mose, $500; George, $500; John, $500; Abram, $500; Joseph, $300; Martin $600; Israel, $500; Tom, $400; Jim, $300; Clemot, $300; Moses, $200; Anna, $200; Jasper, $300; Hilliard, $200; Frances, $300; Fanny, $200; Adelia, $200; Ellen, $500; Green, $300; Maria, $400; Celia, $400; Susan, $400; Victoria, $300; Mourning, $200; Big Mary, $400; Little Mary, $400; Lucretia, $400; Sena, $400; Caty, $400; Matilda, $400; Harriet, $400; Augustus, $500; Rose, $400; Betsey, $400; Hetty, $500; Hercules, $200; Daniel, $400; Henry, $300; and Emmeline, $400. The above named slaves were duly advertised according to law, to be sold on the 5th day of May, A. D. 1851, before the court-house door, in the city of Vicksburg; and J. C. Regan then and there appeared, and claimed said slaves, and made oath that the said property levied on was not the property of the defendant, Jesse B. Ragan, but in him, the said J. C. Regan, trustee, &c., and John C. Regan, individually; and the said John C. Regan gave bond for the trial of the right *of* thereof *thereof*, with A. C. Downs and Sam'l Lum, securities; which said bond is herewith returned to the court, and the slaves mentioned in said levy returned to the claimant, John C. Regan.

FIELDING DAVIS,
Marshal southern district, Miss.

Said Ragan then offered to read in evidence his certificate of bankruptcy, which is in the words and figures following, to wit:

At a district court of the United States, in and for the southern district of Mississippi, sitting in bankruptcy, at Jackson, on the twentieth

day of February, A. D. one thousand eight hundred and forty-three; present, the honorable Samuel J. Gholson, district judge.

In the matter of the petition of Jesse B. Ragan, of Warren county, a bankrupt, to be discharged from his debts. No. 384.

Whereas, on the eighth day of July, 1842, the above named Jesse B. Ragan filed his petition in this court, praying that the said Jesse B. Ragan might be declared a bankrupt, and be discharged from his debts, and was, on the eighth day of November, 1842, by the decree of this court, duly declared a bankrupt:

Now, at this day, to wit, on the twentieth day of February, upon reading the said petition, with the schedule and inventory thereunto annexed, together with the said decree above mentioned, and due proof of the publication of notice of the final hearing of the said petition, it appearing that the said Jesse B. Ragan has fully complied with the provisions of the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved August 19th, 1841, and is entitled to be discharged from his debts.

It is therefore ordered, adjudged, and decreed, that the said Jesse B. Ragan be, and he hereby is, by virtue of the act aforesaid, fully and entirely discharged from all his debts.

In testimony whereof I, Samuel J. Gholson, judge of the district court of the United States for said district, have signed these [L. S.] presents, and caused the seal of said court to be hereunto annexed.

S. J. GHOLSON,
District Judge.

Teste: WM. BURNS,
Clerk of the southern district of Mississippi.

UNITED STATES OF AMERICA,
Southern district of Mississippi.

District court, United States.

I, William H. Brown, clerk of said district court, do hereby certify, that the foregoing is a true and correct copy of the decree of final discharge in bankruptcy of Jesse B. Ragan, of Warren county, in said district, as the same now remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed the [L. S.] seal of said court, at Jackson, this 26th day of April, A. D. 1851.

W. H. BROWN, *Clerk.*

But the court refused to permit the same to be read. He then offered to read the following affidavit, to wit:

Jesse B. Ragan makes oath that the debt for which the judgment of C. and L. Tiernan was obtained against him and others in this court,

on the 24th May, 1839, for 7,308 $\frac{83}{100}$ dollars, was not a fiduciary debt or a trust debt; he was merely a surety for the maker of the note, whose name is first signed on it, which will appear from the note itself on file among the papers in said case.

J. B. RAGAN.

Sworn to and subscribed in open court, May 10th, 1851.
W. H. BROWN, *Clerk.*

But the court refused to hear the same; which being all the evidence offered, the said Jesse B. Ragan moved to quash the execution and levy aforesaid, but the court refused to quash the same. To the opinion and judgment of the court refusing to hear any of said testimony, and overruling said motion to quash, he, the said Ragan, then and there excepted, and prayed that this his bill of exceptions be signed, sealed, and made a part of the record.

P. V. DANIEL, [SEAL.]
S. J. GHOLSON. [SEAL.]

(*Copy of writ of error and bond.*)

UNITED STATES OF AMERICA,
Southern district of Mississippi, sct.

Know all men by these presents, that we, Jesse B. Ragan and Alfred C. Downs, are held and firmly bound unto Luke Tiernan and Charles Tiernan in the just and full sum of three hundred dollars, lawful money of the United States, to be paid to the said Luke Tiernan and Charles Tiernan, their lawful attorneys, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 14th day of June, A. D. one thousand eight hundred and fifty-one.

The condition of this obligation is such, that whereas, at a term of the circuit court of the United States, for the southern district of Mississippi, commenced and held at the city of Jackson, on the first Monday of May, A. D. 1851, judgment was rendered by said court, in favor of the said Luke and Charles Tiernan, against the said Jesse B. Ragan, on a certain motion made by the said Jesse B. Ragan to quash an execution issued January 27th, A. D. 1851, on a judgment obtained in said court on the 24th May, A. D. 1839, in favor of the said L. and C. Tiernan, for the sum of $7,308 83, against the said Jesse B. Ragan and others, and also to quash the levy of the execution on the slaves mentioned in the marshal's return, and for a perpetual stay of execution; and the said Jesse B. Ragan hath sued out a writ of error, from the Supreme Court of the United States, to reverse said judgment:

Now if the said Jesse B. Ragan shall prosecute his said writ of error to effect, and shall well and truly pay and satisfy all such damages, interest, and costs, as the said Supreme Court of the United States

shall adjudge in the premises, if he, the said Jesse B. Ragan, shall fail to make his plea good, then, and in that case, this obligation to be void, otherwise to remain in full force and virtue.

JESSE B. RAGAN, [SEAL.]
A. C. DOWNS. [SEAL.]

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the judges of the circuit court of the United States, for the southern district of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Luke and Charles Tiernan, plaintiffs, vs. Jesse B. Ragan, defendant, a manifest error hath happened, to the great damage of the said Jesse B. Ragan, defendant, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in his behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the first Monday of May, in the year of our Lord one thousand eight hundred and fifty-one, and of the independence of the United States the seventy-fifth.

Issued the 16th day of June, A. D. 1851.

W. H. BROWN,
Clerk circuit court United States, for southern district of Mississippi.

UNITED STATES OF AMERICA, *ss.*

To Luke Tiernan and Charles Tiernan, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington, on the first Monday in December next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the ninth circuit and southern district of Mississippi, wherein Jesse B. Ragan is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not

be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel J. Gholson, one of the judges of the circuit court of the United States for the southern district of Mississippi, this 16th day of June, in the year of our Lord one thousand eight hundred and fifty-one, and in the seventy-fifth year of the independence of the United States.

S. J. GHOLSON.

Executed on Adams and Dixon, attorneys of L. and C. Tiernan, 4th November, 1851.

F. DAVIS, *Marshal*,
By R. FLETCHER, *Deputy Marshal*.

Service - - -	$2 00
Copy - - -	50
E. and R. - - -	50
	$3 00

UNITED STATES OF AMERICA,
Southern district of Mississippi.

Circuit court, United States.

I, William H. Brown, clerk of said circuit court, do hereby certify, that the foregoing sixteen pages contain a full, true, and complete transcript of the record of the judgment in the case therein named, as the same now remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Jackson, this 4th day of November A. [SEAL.] D. 1851, and of the independence of the United States the seventy-sixth.

W. H. BROWN, *Clerk*.